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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,341	11/26/2003	Hongjie Cao	SPG 6613 PDUS	8212
27624	7590	06/10/2010	EXAMINER	
AKZO NOBEL INC. LEGAL & IP 120 WHITE PLAINS ROAD, SUITE 300 TARRYTOWN, NY 10591			CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1611	
			NOTIFICATION DATE	DELIVERY MODE
			06/10/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPANLPATENT@AKZONOBEL.COM

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/723,341

**Applicant(s)**

CAO ET AL.

**Examiner**

Lakshmi S. Channavajjala

**Art Unit**

1611

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 25 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-2, 8-10 and 27-29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Lakshmi S Channavajjala/  
Primary Examiner, Art Unit 1611

Continuation of 11, does NOT place the application in condition for allowance because: Applicants' arguments regarding the rejection of claims 1, 2, 8-10 and 27-29 as failing to comply with the description have been considered and found persuasive. Accordingly the rejection has been withdrawn.

**Prior art rejections:**

Applicants argue that Seib admittedly fails to teach the polymer in the form of an emulsion, Kubik fails to disclose the claimed polymer and only states that the polymer may be prepared as an emulsion, solution etc., and that it can be inferred from Kubik that such disclosure teaches that the film forming properties and emulsifying properties are unaffected by the method of preparation. Applicants argue that it is the Office's burden to establish why one of ordinary skill in the art would have prepared the particular polymer of Seib and do so in the form of an emulsion rather than in the forms taught by Seib; and further, the Office must do so without using Applicants' own disclosure as a roadmap, i.e. without using impermissible hindsight, especially where there is no guidance.

Applicants' arguments are not persuasive because even though Seib does not teach an emulsion of the polymer, instant claims can be interpreted as a composition in the form of an emulsion where in the water dispersible acrylate copolymer has been added (resulting in an emulsion). while it is true that Kubik teaches any method of preparation, a skilled artisan would expect (without the instant road map) that the polymer prepared by any of the methods suggested would still result in a film that binds UV light absorber and resists water removal. Hence, the argument regarding hindsight construction is not persuasive. The motivation to modify the polymer of Seib with Kubik comes from the teachings of Kubik that the acrylate copolymers may be employed in sunscreen compositions for effective binding of UV absorber and water repellent effect and not from instant specification. More particularly, Kubik also teaches that the polymer can impart water resistance similar to instant.

Applicants' arguments that Kubik teaches away from Seib is not persuasive because Kubik does not cite Seib's teachings. Moreover, Kubik suggests solutions for the problems arising with polymers that are conventionally used from alcoholic solvents i.e., suggests preparing oil-based emulsions so as to avoid the dermal irritation and yet retain the film-forming properties of acrylate properties. Applicants' argument that Kubik primarily teaches oil-based compositions is oil soluble even though they are taught to be water dispersible and not the instant claimed water dispersible polymer emulsion, is not persuasive because instant claims do not recite what the final form of the composition and accordingly the formation of an emulsion taught by Kubik by adding water to an oil soluble (water dispersible polymer) still meets the claimed composition. Instant copolymer emulsion can be construed as the final form of the composition being in an emulsion form because instant composition does not exclude oil (taught by Kubik for forming emulsions). Applicants' argument that Kubik implies that lower alkyl esters impart oil insoluble characteristics to the composition whereas the instant claims exclude hydrophobic monomers alkyl group of greater than 8 carbon atoms, is not persuasive because firstly the claims do not exclude C6 and C7 alkyl group and Kubik teaches C6 and C7 alkyl groups. On one hand applicants admit that there is an overlap in the carbon atoms taught by Kubik and the instant claims, and yet argue that Kubik teaches away. Applicants neither pointed as to where the reference teaches that lower alkyl esters should not be used, nor applicants have provided any evidence to show that the lower alkyl esters of Kubik impart oil insolubility. Applicants argue that Cannell teaches aqueous carrier systems for incorporating water insoluble polymers in to aqueous solutions, and that Cannell does not make up for the deficiencies of Kubik and Seib. However, the arguments are not persuasive because the rejection cites that instant claims are unpatentable over Cannell in view of Seib and Kubik and suggests modifying the teachings of Cannell with that of Seib and Kubik. Further, the arguments regarding Kubik and Seib have been addressed above.